

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 321.20, the Iowa Department of Transportation, on October 18, 2017, adopted amendments to Chapter 400, "Vehicle Registration and Certificate of Title," Iowa Administrative Code.

The Department is adopting amendments to Chapter 400 to comply with 2016 Iowa Acts, Chapter 1083, sections 1 and 2, which amended Iowa Code section 321.20. The amendments define the specific process requirements for an electronic application for a vehicle title and registration transaction, including the roles and responsibilities of an electronic registration and titling (ERT) service provider approved by the Department to facilitate electronic applications for vehicle titles and registrations from an end user (a motor vehicle dealer or an individual) to the county treasurer. Subrule 400.3(16) serves as a basis for agreements that may be executed between the Department and an approved ERT service provider.

The following explains each item in this rule making:

Item 1 adds definitions for new terms used within the chapter, specifically, definitions of "electronic," "electronic record," "electronic signature," "end user," and "ERT service provider."

Item 2 adds language which states that an application for certificate of title or registration may be submitted in an electronic format.

Item 3 provides that the signature of an applicant for a certificate of title or registration may be submitted in an electronic format.

Item 4 provides that a dealer certification regarding the sale price of a vehicle, the amounts allowed for property traded in, nontaxable charges and rebates, the tax price of the vehicle, the date that a "registration applied for" card was issued, and the registration fee may be submitted in an electronic format when the application for a certificate of title or registration is also submitted electronically.

Item 5 adds new subrule 400.3(16) to define the roles, responsibilities, and requirements of the ERT process that will serve as the basis for an agreement between the Department and an approved ERT service provider. The following further explains the paragraphs within subrule 400.3(16):

- Paragraph "a" explains the role of an ERT service provider in the electronic application process. Specifically, this paragraph identifies that an application for a certificate of title or registration of a vehicle may be submitted electronically via a Web-based service that is offered and maintained by an ERT service provider. Paragraph "a" provides that an ERT service provider must execute an authorizing agreement with the Department and that the terms of the agreement are prescribed by the Department. Additionally, the paragraph states that the ERT service provider must meet minimum qualifications in relation to technical, financial, legal, and administrative capacity to meet the Department's satisfaction and also retain the ability and capacity to interface with the Department's vehicle title and registration system. Lastly, the paragraph provides that the authorizing agreements between the Department and an ERT service provider shall include provisions that address security, financial responsibility, privacy, termination, and any other matters deemed appropriate by the Department.

- Paragraph "b" provides that an ERT service provider shall execute an authorizing agreement with the Department as a condition of operating in such a capacity and also provides the liability provisions which specify that an ERT service provider shall be fully liable for any liabilities the provider incurs as a result of its actions as an agent for an end user, which may be a person or a business using the ERT service.

- Paragraph "c" provides that an authorized ERT service provider may establish Web-based services to allow end users to submit electronic applications for a certificate of title or registration to a county treasurer via the Department's ERT process and application program interface established by the Department. The paragraph provides that an ERT service provider is not in any manner a vendor for the Department. Instead, the ERT service provider acts as a contractor or vendor for an end user, and

the end user's sole course of recourse is against the ERT service provider and not the Department. The paragraph also allows the ERT service provider to charge the end user a fee for its services.

- Paragraph "d" provides that an end user that is a licensed motor vehicle dealer may charge the dealer's customer a separate and distinct fee for the ERT provider's services as long as the dealer discloses the charge to the customer before submitting the application. However, that fee may not be included as a part of the documentary fee. The paragraph also confirms that no fees may be charged for a "registration applied for" card.

- Paragraph "e" confirms that an authorized ERT service provider does not have the authority to approve or deny a certificate of title or registration application and that an application is not considered submitted to the county treasurer until it is electronically submitted to the county treasurer by the ERT service provider. Paragraph "e" also confirms that the county treasurer remains responsible for approving or denying an application for a certificate of title or registration.

- Paragraph "f" states that an authorized ERT service provider is responsible for the ERT service provider's payment solution and for all payment transaction security and compliance with all applicable standards associated with the payment solution or solutions offered by the ERT service provider. Further, paragraph "f" provides that the ERT service provider shall route the pertinent application fees to an account designated by the county treasurer. The fees shall be available to the county treasurer no later than three business days following the submission of a transaction for which the fees were paid. The paragraph also confirms that the ERT service provider shall be responsible for reconciling insufficient funds from an end user.

- Paragraph "g" provides that the fees submitted with an electronic application for certificate of title or registration are not deemed received by the county treasurer until the fees are received into the county treasurer's account via the completion of an automated clearing house (ACH) transfer. Additionally, paragraph "g" requires an ERT service provider to furnish a surety bond that runs to the state of Iowa in the amount of \$150,000 and requires the ERT service provider to indemnify any end user that uses the services from loss or damage caused by the ERT service provider's noncompliance. The paragraph provides that the bond shall be filed with the Department before the ERT service provider may be approved to begin offering services as an ERT service provider.

- Paragraph "h" provides that an ERT service provider shall provide accounting reports of all fees received and transferred to each county treasurer, in a manner prescribed by the Department.

- Paragraph "i" provides that an ERT service provider shall submit to audits by the Department and the State Auditor. The audits are required annually but may be more frequent if determined necessary by the Department or the State Auditor.

- Paragraph "j" provides that an electronically submitted application for certificate of title or registration must meet all legal requirements for the transaction, that no requirements shall be excused or waived as a result of the electronic submittal of the transaction, and that the requisite signatures may be submitted electronically. The county treasurer retains the right to determine the genuineness, regularity, and legality of the application and may, whenever there is any question about the application, require the original document as a condition of accepting an application. Further, paragraph "j" requires the end user that submitted the application to retain any original document scanned and submitted with the electronic application for three years at the end user's principal place of business if the end user is a business. However, the paragraph provides that a damage disclosure statement shall be retained for five years from the date of the application where required by Iowa Code section 321.69. Lastly, the paragraph requires that all of the scanned documents submitted as a component of an electronic application shall be available for inspection by the Department. This requirement aligns with the current requirements and departmental procedures for paper applications.

- Paragraph "k" requires an end user that is a licensed motor vehicle dealer to inform the customer that the application for title or registration will be submitted electronically. Paragraph "k" requires the motor vehicle dealer to obtain the customer's power of attorney to permit the motor vehicle dealer to submit the application on the customer's behalf and to scan the power of attorney with the electronic documents as a part of the application. The paragraph further requires the dealer to retain the power of attorney for three years at the dealer's principal place of business and provides that the power of attorney

is subject to inspection by the Department. In the interest of consumer protection, paragraph “k” also requires the dealer to review the details of the entire application with the customer before submitting the electronic application and to provide the customer with a copy of the application after submitting it.

- Paragraph “l” provides that an authorized ERT service provider shall retain all data, information, records, and electronic records associated with an electronic application or transaction submitted or transacted through the ERT service provider for a period of at least three years, or longer as required by applicable state or federal law or regulation, and shall make all such data, information, and records available to the Department at the Department’s request. Further, paragraph “l” requires the ERT service provider to use a secure profile management capable of authenticating and verifying any user that initiated the submission for an application or transaction.

- Paragraph “m” provides that an ERT service provider shall comply with the privacy protections and requirements of Iowa Code section 321.11 and with the federal Driver’s Privacy Protection Act, 18 U.S.C. Sec. 2721 et seq. (DPPA), and shall only use or release personal information provided to the ERT provider in the course of an ERT transaction for purposes necessary to perform services as an ERT service provider, and shall not release such personal information for any other purpose or use except as required to comply with legal or administrative matters as permitted under the DPPA. The paragraph also states that the ERT service provider shall immediately advise the Department and any potentially affected individual if there is a suspected or actual unauthorized release of personal information or highly restricted personal information.

Item 6 updates the implementation sentence of rule 761—400.3(321) to add a reference to Iowa Code sections 321.105A and 322.19A and to strike the reference to Iowa Code section 423.7A since this section was repealed.

Item 7 provides that the county treasurer is exempted from retaining the supporting documents submitted as a component of an electronic application for a certificate of title or registration. County treasurers are still required to maintain any paper applications.

Notice of Intended Action for these amendments was published in the September 13, 2017, Iowa Administrative Bulletin as **ARC 3306C**. These amendments are identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 321.20 and 322.19A.

These amendments will become effective December 13, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of “Electronic,” “Electronic record,” “Electronic signature,” “End user” and “ERT service provider” in rule **761—400.1(321)**:

“*Electronic*” means as defined in Iowa Code section 554D.103.

“*Electronic record*” means as defined in Iowa Code section 554D.103.

“*Electronic signature*” means as defined in Iowa Code section 554D.103.

“*End user*” means a person or entity that directly uses the services of an electronic registration and titling (ERT) service provider to submit an electronic application for certificate of title or registration of a vehicle.

“*ERT service provider*” means a person or entity authorized by the department under subrule 400.3(16) to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

ITEM 2. Amend subrule 400.3(1) as follows:

400.3(1) Application form. To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete an application form prescribed by the department, which may be electronic. Application shall be made in accordance with Iowa Code chapter 321, these rules, and other applicable provisions of law.

ITEM 3. Amend subrule 400.3(10) as follows:

400.3(10) *Signature of applicant.* The owner shall sign the application form in ink, unless submitted electronically.

ITEM 4. Amend paragraph **400.3(11)“b”** as follows:

b. The certification shall include the dealer’s number and name and shall be signed by the dealer or an authorized representative of the dealer. The signature may be electronic when the application form is submitted electronically in a manner approved by the department.

ITEM 5. Adopt the following **new** subrule 400.3(16):

400.3(16) *Electronic applications.*

a. Applications for certificate of title or registration of a vehicle may be submitted electronically via Web-based services offered and maintained by ERT service providers authorized by the department. To be authorized to serve as an ERT service provider, the ERT service provider must establish to the satisfaction of the department that the ERT service provider has the technical, financial, legal, and administrative capacity to meet the department’s requirements for submission of electronic applications and must execute an agreement, in a form and content determined by the department, that authorizes and permits the ERT service provider to interact with the department’s vehicle title and registration system via an application program interface established by the department and to submit electronic applications on behalf of end users that choose to use the ERT service provider’s services to submit an application electronically. Agreements executed by ERT service providers under this paragraph shall include provisions that address security, financial responsibility, privacy, termination, and any other matters deemed appropriate by the department.

b. An agreement executed by an ERT service provider is a condition of authorization and permission only. An ERT service provider authorized by the department is not a contractor, vendor, employee, or agent for the department, the state of Iowa, or any county treasurer accepting electronic applications, and shall not be entitled to compensation from the department, the state of Iowa, or any county treasurer for any service, transaction, or other act rendered as an ERT service provider. The ERT service provider remains solely liable and responsible for the ERT service provider’s services and activities as an ERT service provider and shall defend, indemnify and hold harmless the department, any county treasurer, the state of Iowa, and its, or their agents, officers, heirs, assigns, and employees of and from any and all damages, claims, penalties, debts owed, or any other form of liability arising from or related to the ERT service provider’s service, performance, errors, acts, or omissions. An ERT service provider that chooses to provide service under the department’s permission and authorization does so at the ERT service provider’s sole risk and has no claim or right against the department, any county treasurer, or the state of Iowa for fees, costs, profits, loss of profits, interruption of business, or any other form of compensation, remuneration, liability, or damages arising from or related to the ERT service provider’s activity as an ERT service provider or inability to serve as an ERT service provider.

c. An ERT service provider authorized by the department may establish Web-based services to allow end users to submit applications via an electronic interface established and maintained by the ERT service provider and to submit the applications on behalf of the end user to county treasurers via the department’s vehicle title and registration system and application program interface established by the department. In doing so, the ERT service provider is acting as a contractor or vendor for the end user and not the department, any county treasurer, or the state of Iowa, and remains solely responsible to the end user for any failure to perform or breach of performance or agreement. When the end user is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C, “end user” includes the motor vehicle dealer and any person with an interest in the vehicle that is the subject of the application. The ERT service provider may charge the end user a fee for services rendered as an ERT service provider.

d. In addition to the documentary fee authorized under Iowa Code section 322.19A, an end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C may pass and charge to a customer the fees or costs incurred by the motor vehicle dealer to submit the customer’s application through an ERT service provider’s services as a third-party cost or fee under Iowa Code section 322.19A(1), provided that the motor vehicle dealer discloses the charge to the customer before

submitting the application. The documentary fee charged by the motor vehicle dealer shall not exceed the amount authorized by Iowa Code section 322.19A(3). Neither the ERT service provider nor the motor vehicle dealer shall charge a customer for creation or delivery of a “registration applied for” card.

e. An ERT service provider authorized by the department has no authority to approve or deny applications. Acceptance of an application by an ERT service provider is not approval of the application. An application is not considered to be formally submitted until it is electronically transmitted by the ERT service provider to the county treasurer via the department’s vehicle title and registration system and the application program interface established by the department. The county treasurer remains responsible for approving or denying the application and may reject the application for any reason permitted or required by state or federal law or regulation.

f. An authorized ERT service provider is responsible for the ERT service provider’s payment solution and for all payment transaction security and compliance with all applicable standards associated with the payment solution or solutions offered by the ERT service provider. The ERT service provider shall transfer title and registration fees collected by the ERT service provider directly to an account designated by the county treasurer responsible for the transaction via automated clearing house (ACH) transfer and the fees shall be available to the county treasurer no later than three business days following the submission of a transaction for which the fees were paid. Funds received by the ERT service provider shall be held until transfer to the county treasurer’s account in a bank insured by the Federal Deposit Insurance Corporation. The ERT service provider shall be responsible for reconciling insufficient funds from an end user.

g. Fees submitted electronically are not deemed to be received until deposited into the county treasurer’s account via completion of the ACH transfer. The end user remains responsible for fees submitted via an ERT service provider and the end user’s responsibility for payment of any required fees is not waived or excused by the ERT service provider’s failure to complete the transfer. As a condition of authorization and permission to serve as an ERT service provider and before the ERT service provider may offer services, the ERT service provider shall furnish a surety bond executed by the ERT service provider as principal and executed by a corporate surety company, licensed and qualified to do business within the state of Iowa. The bond shall run to the state of Iowa, be in the amount of \$150,000 and be conditioned upon the faithful compliance by the ERT service provider of all obligations imposed upon the ERT service provider by any applicable state or federal law or regulation, including the terms of this chapter, the authorizing agreement executed by the ERT service provider under this chapter, and any terms or conditions existing between the ERT service provider and any end user using the ERT service provider’s services. The ERT service provider shall indemnify any end user that uses the ERT service provider’s services of and from any loss or damage occasioned by the failure of the ERT service provider to so comply, including but not limited to the complete and timely submission to the county treasurer of the title and registration fees required for a given transaction. The bond shall be filed with the department before the ERT service provider may begin or offer services as an ERT service provider. The aggregate liability of the surety shall not exceed the amount of the bond.

h. The ERT service provider shall provide accounting reports of all fees received and transferred to each respective county treasurer, in a manner determined by the department.

i. The ERT service provider shall submit to audits by the department and the state auditor, which shall be at least yearly but may be more frequently if determined necessary by the department or the state auditor.

j. An application submitted electronically must meet all legal requirements for the transaction in question, and no requirement shall be excused or waived as a result of submitting the transaction electronically. However, wherever a signature is required, the signature may be an electronic signature, as determined by the department and according to methods approved by the department. Wherever an electronic solution approved by the department requires the submission of scanned documents, the scanned documents shall be of a quality and resolution determined by the department, which shall at a minimum meet any applicable state or federal standard or requirement, and shall completely capture and represent the original document. The department and any county treasurer processing an application retain the right under Iowa Code section 321.13 to determine the genuineness, regularity, and legality of

the application and any scanned document submitted as part of the application and may withhold approval of the application and require presentation of the original document whenever the scanned document is of insufficient quality, content, or appearance to determine the same. An end user that submits a scan of an original document as part of an electronic application shall retain the original document for a period of three years. An end user shall make all such original documents available for inspection by the department at the department's request. An end user that is a business entity shall retain the documents at the end user's principal place of business in Iowa. Anything in this paragraph notwithstanding, lessors required to retain a damage disclosure statement under Iowa Code section 321.69(4), and authorized vehicle recyclers licensed under Iowa Code chapter 321H and motor vehicle dealers licensed under Iowa Code chapter 322 required to retain damage disclosure statements under Iowa Code section 321.69(6) shall retain the original document for a period of five years from the date of the statement, as required therein.

k. An end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C and that electronically submits an application on behalf of the person to whom the dealer is transferring the vehicle shall disclose to the person that the application will be submitted electronically and shall obtain the person's power of attorney to submit the application on the person's behalf. The power of attorney shall be retained at the motor vehicle dealer's principal place of business for a period of three years from the date of application and shall be available for inspection by the department at the department's request. The motor vehicle dealer shall also review with and disclose to the person all details of the application, before submitting the application, and shall provide a complete, true, and accurate copy of the application to the person immediately after submitting the application. The power of attorney shall be submitted electronically as a scanned document with the electronic application.

l. An authorized ERT service provider shall retain all data, information, records, and electronic records associated with an electronic application or transaction submitted or transacted through the ERT service provider for a period of at least three years, or longer as required by applicable state or federal law or regulation, and shall make all such data, information, and records available to the department at the department's request. This includes but is not limited to the identity of the end user that initiated the electronic application or transaction. Identity information for end users shall be maintained at the entity and individual level, meaning that the ERT service provider must implement and maintain secure profile management that is capable of authenticating and verifying the identity of any entity that initiated the application or transaction and the individual officer, employee, or agent within the entity that was authorized by the entity to initiate the application or transaction.

m. The ERT service provider shall hold and protect all personal information as required by Iowa Code section 321.11 and the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq. (the DPPA), shall only use or release such personal information for purposes necessary to perform services as an ERT service provider, and shall release such personal information for no other purposes or use except as required to comply with legal or administrative matters as permitted under the DPPA. The ERT service provider shall immediately advise the department of any suspected or actual unauthorized release of personal information or highly restricted personal information and shall notify the entity and individual whose personal information or highly restricted personal information was released in an unauthorized manner.

ITEM 6. Amend rule ~~761~~—**400.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.105A, 321.109, 321.122 and ~~423.7A~~ 322.19A.

ITEM 7. Amend subrule 400.4(10) as follows:
400.4(10) *Supporting document retained by county treasurer.* All supporting documents, except those submitted pursuant to subrule 400.3(16), shall be retained by the county treasurer.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/8/17.